

REMARKS

In the Office Action, claims 15, 18, 19, 25-27 and 29-32 were rejected under 35 U.S.C. 102(e) as being anticipated by Kuras, U.S. Patent No. 7,169,181 (“Kuras”). Claim 28 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuras.

In this response, claim 15 has been amended. New claim 33 has been added. Upon entry of the amendments, claims 15, 18, 19, 21, and 25-33 will be pending.

Reconsideration of the application in view of the amendments and following remarks is respectfully requested.

Interview Summary

Applicant thanks Examiner Yang and his supervisor, Thomas Barrett, for the courtesy of an interview on June 16, 2009 with Applicant’s representatives Thomas P. Carty and Leigh Outten. During the interview, the Examiner suggested that Applicant amend the claim to better define the cross section and the recess as recited in the claims. Examiner agreed that an amendment of the claims to clarify this feature would overcome the rejections under Kuras.

Rejection to claims 15, 18, 19, 25-27 and 29-32 under 35 U.S.C. § 102(e)

Claims 15, 18, 19, 25-27 and 29-32 were rejected under 35 U.S.C. 102(e) as being anticipated by Kuras.

Kuras describes an artificial disc having an upper retaining member with an outer surface engageable with a first vertebra of the spinal column, a lower retaining member with an outer surface engageable with a second vertebra, and a resilient core interconnecting upper and lower retaining members. *See* Kuras, col. 1, lines 21-27. The resilient member is immovably affixed to the upper and lower retaining members. *See* Kuras, claim 1.

As amended, claim 15 recites an artificial intervertebral disk comprising an intermediate

element having an annular closed shape and an oval or circular cross-section in a second plane perpendicular to a first plane, at least in sections, in an uncompressed state of the intermediate element, wherein each of the two outer elements have an annular recess with a concave contour and is joined in a form-fitting manner to the intermediate element at the recess, and wherein the contour is oversized relative to the intermediate element such that a radius of the contour is greater than a radius of the intermediate element. Support for the amendment is found, for example, at paragraphs [0014], [0015] and Figs. 1 and 3.

Applicants respectfully submit that Kuras does not teach the features as recited in amended claim 15. A cross-section of the resilient core member in a first plane perpendicular to a second plane as taught by Kuras resembles a rectangle in an uncompressed state. *See* Kuras, Figs. 3, 8, and 9. Thus, Kuras does not teach the feature of an oval or circular cross-section in a second plane perpendicular to a first plane, at least in sections, in an uncompressed state of the intermediate element.

Furthermore, Kuras describes a resilient core member immovably affixed to upper and lower retaining members and disposed in a concave contour of the retaining members. *See* Kuras, col. 2, lines 35-37, 61-63, col. 3, lines 34-37, and claim 1. Kuras therefore does not teach and in fact teaches away from the feature wherein a radius of the contour is greater than a radius of the intermediate element because any outer surface of the resilient member need be the same size as the concave contour of the upper and lower retaining members in order to be immovably affixed.

Newly added claim 33 recites the feature wherein a circular or ovular cross-section is formed in a second plane perpendicular to the first plane in an uncompressed state. As stated above, because Kuras does not teach this feature, applicants respectfully submit that new claim 33 is allowable over Kuras.

Withdrawal of the rejections to claims 15, 18, 19, 25-27 and 29-32 under 35 U.S.C. § 102(e) is respectfully requested.

Application No. 10/599,524  
Amendment dated July 2, 2009  
Reply to Office Action of April 28, 2009

Docket No.: 20802/0205146-US0

Rejection to claims 28 under 35 U.S.C. § 103(a)

Claim 28 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuras.

Applicants respectfully submit that Kuras fails to suggest at least the features of independent claim 15 for the reasons discussed above. Those features are also present in claim 28.

Accordingly, withdrawal of the rejection to claim 28 under 35 U.S.C. § 103(a) is respectfully requested.

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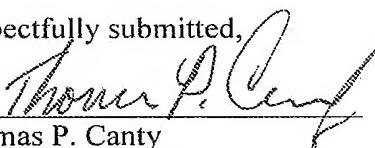
**CONCLUSIONS**

In view of the above amendment, applicant believes the pending application is in condition for allowance.

The Commissioner is hereby authorized to charge any unpaid fees deemed required in connection with this submission, including any additional filing or application processing fees required under 37 C.F.R. §1.16 or 1.17, or to credit any overpayment, to Deposit Account No. 04-0100.

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Respectfully submitted,

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